

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2666 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 Yes.

2 to 5 No

J.B.PATEL SINCE DECEASED BY HIS HEIRS

Versus

STATE OF GUJARAT

Appearance:

Mr. Nilesh A. Pandya for Petitioners

Mr. A.J. Desai, A.G.P. for Respondents

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 21/03/97

ORAL JUDGEMENT

The petition raises a very short issue. The petitioners are legal heirs of Jaynarayanbhai Bhailalbhai Patel who died on 5.12.1980. The said Jaynarayan Bhailalbhai Patel had submitted statements of land held by him under Urban Land Ceiling Act in which it was

claimed by him that the lands held by him are ancestral property in his hands in which his two sons have interest by birth and the interest of the sons in land is to be separately considered. It was contended that he having two major sons at the time, he is entitled to separate units for himself and for his major sons. The plea of the declarant was rejected by the competent officer as well as by the appellate authority on the ground that he has not produced any evidence in support of his claim that the land is ancestral property held by the declarant.

2. The finding is apparently erroneous inasmuch as the competent officer in his order has referred to the Entry No. 771 of records standing in the name of Jaynarayan Bhailalbhai Patel of the land in question which is situated in village Ankadia. Entry No. 771, copy of which has been filed in this court and to which reference has been made by the competent officer reads in no uncertain terms that name of Jaynarayan Bhailalbhai Patel is being entered in the records in place of Bhailalbhai Ranchhodbhai who died on 7.9.1955. Bhailalbhai Ranchhodbhai is the father of Jaynarayan Bhailalbhai Patel. This entry No. 771 in the land records is a relevant piece of evidence to support the petitioner's claim that he has acquired the land by succession or by survivorship on 7.7.1955 prior to the commencement of Hindu Succession Act from his father. If that is so, even if the property is self acquired property of Bhailalbhai having devolved on him through succession, it would partake the character of ancestral property in the hands of Jaynarayan Bhailalbhai. If the property was already ancestral and devolved on Jaynarayanbhai by survivorship then it will remain ancestral property. The order therefore having been passed without taking into account the material evidence before the authorities below vitiates its finding and amounts to an error apparent on the face of the record. The competent officer as well as the appellate authority has not considered the case of the petitioner of separate unit for himself and the major sons by ignoring relevant material on record.

3. In this view of the matter, this petition succeeds. The impugned orders of the competent officer dated 11.4.1986 and that of the appellate authority are quashed and set aside. It will now for the competent officer to proceed further in accordance with law. Rule is made absolute. No order as to costs.

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